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OPEN MEETING ITEM

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MARC SPITZER - Chairman
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Executive Secretary

ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

DATE: September 12, 2003

DOCKET NO: W-02353A-03-0507

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

PARK WATER COMPANY, INC.
(EMERGENCY RATE INCREASE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 22, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 30 and October 1, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

SEP 12 2003

DOCKETED BY	
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BRIAN C. MCNEIL
EXECUTIVE SECRETARY

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 IN THE MATTER OF THE APPLICATION OF
9 PARK WATER COMPANY, INC. FOR AN
10 EMERGENCY RATE INCREASE.

DOCKET NO. W-02353A-03-0507

DECISION NO. _____

11 OPINION AND ORDER

12 DATE OF HEARING: September 2, 2003

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

15 APPEARANCES: Ms. Patricia O'Connor, on behalf of Park Water
16 Company, Inc.; and

17 Mr. David Ronald, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation.

20 **BY THE COMMISSION:**

21 On July 23, 2003, Park Water Company, Inc. ("Company" or "Applicant") filed with the
22 Arizona Corporation Commission ("Commission") an application requesting an emergency rate
23 increase in the form of a \$5.50 per month per customer surcharge and a fifty cent increase on its
24 gallonage charge from \$2.00 to \$2.50 per 1,000 gallons of water to recover estimated water hauling
25 costs due to drought conditions and excessive customer usage of available water production.

26 On July 29, 2003, the Commission, by Procedural Order, scheduled a hearing on the above-
27 captioned matter to determine if an emergency existed that would require the relief requested by
28 Applicant. The Commission's Procedural Order also required Applicant to provide notice to each
customer by mailing and posting a copy of the notice in a public place so that the Company's
customers were aware of the proceeding.

On August 28, 2003, a full public hearing was commenced before a duly authorized
Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant appeared

1 through its president and the Commission's Utilities Division ("Staff") appeared with counsel. Three
2 customers of the Company appeared to make public comment concerning the requested increase.
3 After a full public hearing, the matter was taken under advisement pending submission of a
4 recommended Opinion and Order to the Commission.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. Pursuant to authority granted by the Commission in Decision No. 50073 (July 11,
10 1979), Applicant is an Arizona corporation engaged in the business of providing water service to
11 approximately 124 residential customers in an area nine miles south of Florence, Pinal County,
12 Arizona.

13 2. On July 23, 2003, Applicant filed an application which requested Commission
14 approval for an approximately 26 percent emergency rate increase due to water hauling expenses.
15 The Company's initial proposal called for the surcharge to be imposed to cover a projected water
16 hauling expense of \$51,380 incurred from June 20, 2003 through September 30, 2003. Initially, the
17 Company requested the emergency increase in the form of a surcharge of \$5.50 on the base meter
18 rate and an increase of fifty cents on the gallonage charge per 1,000 gallons. The proposed increase
19 would increase the base residential customer rate from \$20.00 which includes 1,000 gallons of water
20 in the minimum to \$25.50 and would increase the excess gallonage charge from \$2.00 per 1,000
21 gallons to \$2.50 per 1,000 gallons.

22 3. Pursuant to the Commission's Procedural Order, notice of the Company's application
23 and hearing thereon was provided to its customers. The Commission received thirteen telephonic
24 protests from Applicant's customers who oppose Applicant's request for a surcharge because they
25 feel that the Company should have upgraded the system as it added more customers. Three
26 customers also appeared at the hearing and voiced their concerns.

27 4. At present, Applicant is operating with rates which were approved by the Commission
28 in Decision No. 54703 (September 18, 1985).

1 5. At the outset of the proceeding, Ms. Patricia O'Connor, Applicant's president, testified
2 that she became the owner of the Company in 1999, after its former owner, Mr. Gilbert Koritan,
3 transferred his stock in the Company to her as repayment for two loans which she had made to him
4 totaling \$119,000. Prior to that time, she had little, if any, experience in the day-to-day operations of
5 a water utility.

6 6. Ms. O'Connor testified that she has been subsidizing Applicant's operations when
7 revenues are inadequate to pay its operating expenses. The Company's financial records are
8 incomplete because Applicant has failed to keep its books in accordance with the National
9 Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts.

10 7. Ms. O'Connor and a consultant for the Company, Mr. John Byrne, testified that
11 Applicant plans to file a permanent rate case in the near future, but hopes to delay this filing until the
12 end of the 2003 calendar year in order to facilitate the filing with financial data from the most recent
13 complete calendar year.

14 8. From 1999 until recently, Ms. O'Connor relied upon a former employee of Mr.
15 Koritan's to handle Applicant's day-to-day operations as its operator. She has recently hired a new
16 certified operator to deal with the system's operational problems.

17 9. According to Ms. O'Connor, when she took over the Company, it had approximately
18 100 customers and was in compliance with the rules of the Arizona Department of Environmental
19 Quality ("ADEQ"). The Company had adequate water production and storage and had not
20 experienced any water shortages¹.

21 10. Ms. O'Connor also provided copies of ADEQ documentation which reflected that the
22 Company was operating within the rules of ADEQ with respect to operations and maintenance except
23 for failing to test for nitrates in 2001 and 2002. However, she also produced documentation
24 reflecting recent testing for nitrates.

25 11. While Ms. O'Connor acknowledged receipt of a letter from ADEQ in April 1999
26 which pointed out that her system, which then had 88 active connections, could not "reliably support"

27 _____
28 ¹ Presently, the Company's water production facilities consist of one operational well with a 45 GPM capacity
and a 25,000 gallon storage tank and 10,000 gallon storage tank.

1 more than 104 connections "until additional source production" was provided, she responded that the
2 letter was the result of an inquiry concerning additional development in the Company's certified area.
3 However, ADEQ did not place a moratorium on new connections being made on the system at that
4 time.

5 12. Subsequently, in September 1999, ADEQ sent a letter to the Commission advising Mr.
6 Steve Olea² that, if the Company exceeded 104 connections, ADEQ would consider the Company in
7 violation of ADEQ storage rules and subject to possible penalties. However, ADEQ did not seek
8 additional penalties against the Company while small numbers of customers were added over the next
9 several years.

10 13. The Company's first experience of a water shortage occurred around July 4, 2002
11 when the Company experienced a brief water shortage for a day or so. However, a Notice of
12 Violation ("Notice") was not issued by ADEQ even when it was apparent that some new connections
13 had been added to the Company's distribution system.

14 14. The Company's next water shortage arose on or about June 20, 2003, and has
15 continued through the date of the hearing in this proceeding. At one point, Applicant was required to
16 haul water on a daily basis to satisfy what Ms. O'Connor termed "excessive demands" even though
17 the Company had instituted the third level of its Curtailment Tariff which is on file with the
18 Commission. However, these demands have lessened recently and the Company has only been
19 hauling water on weekends. Through August 27, 2003, Ms. O'Connor personally, on the Company's
20 behalf, expended the sum of \$25,026.50 to pay for water hauled by Applicant to satisfy its customers'
21 demands for water.

22 15. Although Applicant had originally sought to recover projected water hauling expenses
23 of \$51,380 through its requested emergency surcharge, at the hearing, Mr. Byrne amended the
24 Company's request to either the actual cost for water hauled through the date of hearing, \$25,062, or
25 a projected amount estimated at \$28,392 through September 30, 2003. This is because Applicant
26 believes that a second well which it owns and is being refurbished and brought on line will be ready
27

28 ² A copy of ADEQ's September 1999 letter to Mr. Olea was also sent to Ms. O'Connor.

1 for testing approximately two to three weeks after the hearing. It is expected that the additional well
2 will alleviate the water shortage being experienced by Applicant's customers.

3 16. To recover either of the lesser amounts for water hauling, Mr. Byrne proposed a
4 surcharge of either \$3.62 per 1,000 gallons or \$4.11 per 1,000 gallons to cover either \$25,026 actual
5 cost or \$28,392 projected cost, respectively. Mr. Byrne recommended that this surcharge be charged
6 for all water consumed including the minimum included in the base rate to encourage conservation³.

7 17. Further complicating the Company's operations, Ms. O'Connor pointed out that
8 Applicant has been involved in a lengthy court proceeding in the Pinal County Superior Court
9 brought in 1998 by Mr. Koritan's former business partner who is a part-time resident of Mesa. Based
10 on a late-filed exhibit in the Docket, it is established that Mr. Koritan encumbered the water utility
11 assets as security for a debt to his former partner and executed a Deed of Trust for the well site and
12 main storage tank without prior Commission approval, in violation of A.R.S. § 40-285(A).

13 18. Although Ms. O'Connor's counsel has argued that this transaction by Mr. Koritan was
14 void under the law, it is her understanding that a trustee's sale may take place in October unless
15 halted by the Court.

16 19. While the litigation has been pending, Ms. O'Connor recently hired a new certified
17 operator to bring the Company into compliance with ADEQ rules, and had a new well pump and
18 booster pump installed to improve water pressure for Applicant's customers prior to the instant
19 problems. However, a decision was made not to increase storage capacity until the court case is
20 resolved.

21 20. Lastly, further clouding the picture for Applicant, Ms. O'Connor testified that while
22 sales taxes have been paid, the Company owes approximately \$3,000 for unpaid property taxes in
23 2002, and since June 24, 2003, at or about the time Applicant's water shortage developed, the
24 Company has not been in compliance with ADEQ rules due to an inability to maintain adequate
25 water pressure of 20 psi and an inability to maintain adequate storage.

26 21. Upon the filing of the Company's application, Staff performed a thorough review of
27

28 ³ Mr. Byrne arrives at these proposed surcharges by dividing the cost of purchased or projected purchase cost of water by the number of gallons sold in the first seven months of 2003.

1 the Company's request and is recommending a denial of the Company's request for emergency rate
2 relief.

3 22. Staff is recommending a denial of the Company's application because, after its review
4 of the Company's finances and an inspection of the Company's utility plant, Staff does not believe
5 Applicant's current situation meets the requirement of Attorney General Opinion No. 71-17⁴.

6 23. Staff's witness testified that he was unable to determine whether the Company is
7 insolvent from its records and doubts the accuracy of the Utilities Division Annual Reports filed with
8 the Commission from 1998 to 2002 since there was data missing, information was copied over from
9 year to year and depreciation expense was not reflected in these reports.

10 24. Staff believes further that the Company should have been on notice since the time of
11 ADEQ's letter to the Company in April 1999 pointing out the issue of a limitation on customers when
12 water production problems were raised, even though a moratorium was not imposed by ADEQ nor
13 were any Notices issued to Applicant by ADEQ.

14 25. Staff further believes a denial of the application is justified because the problem was
15 an ongoing and developing problem which could have been avoided if Applicant had prudently added
16 more storage capacity as customers were added.

17 26. Under the exigent circumstances herein, after our review of the record in its totality,
18 we find that an emergency within the meaning of Attorney General Opinion No. 71-17 exists. First,
19 evidence of the unexpected water shortage constitutes a sudden change which has brought severe
20 financial hardship to the Company. Second, it appears that without Ms. O'Connor's assistance, the
21 Company would have been rendered insolvent by the water shortage. Lastly, it also appears that the
22 Company's legal problems are creating further financial hardship and we question the Company's
23 ability to maintain service pending a formal rate proceeding.

24 27. We believe that Applicant's proposed surcharge of \$4.11 per 1,000 gallons should be
25 adopted for all water consumed, including the amount in the minimum based on actual water hauling

26 ⁴ According to Attorney General Opinion No. 71-17, interim or emergency rates are proper when either all or any
27 of the following conditions occur: when sudden change brings hardship to a Company; when the Company is insolvent;
28 or when the condition of the Company is such that its ability to maintain service pending a formal rate determination is in
serious doubt. Those criteria have been affirmed in *Scates v. Arizona Corporation Comm'n*, 118 Ariz. 531 (Ct. App.
1978) and in *Residential Utility Consumer Office v. Arizona Corporation Comm'n*, 199 Ariz. 588 (2001) ("Rio Verde").

1 expenses through September 30, 2003. As a condition of this interim emergency surcharge,
 2 Applicant shall be required to file by October 31, 2003 a final water hauling expense report ending
 3 September 30, 2003 with the Commission's Docket Control ("Docket Control") and, upon the
 4 effective date that the surcharge is imposed hereinafter, Applicant shall be required to file a monthly
 5 financial accounting with Docket Control on the surcharge balance until the balance established on
 6 September 30, 2003 is paid in full or resolved by subsequent Order of the Commission.

7 28. However, the effective date of the surcharge's imposition shall be the first day of the
 8 month following the Company meeting the following requirements:

- 9 • filing with Docket Control documentary evidence that Applicant is taking steps
 10 to pay its back property taxes with Pinal County;
- 11 • filing with Docket Control documentary evidence that the second well is online
 12 and has been approved by ADEQ to begin providing water to Applicant's
 13 customers;
- 14 • filing with Docket Control a copy for Staff approval of the notice to be mailed
 15 to customers, at least 15 days before the expected date of imposition of the
 16 surcharge informing customers of the approved surcharge;
- 17 • filing with Docket Control documentary evidence that a bond has been posted
 18 which guarantees a refund to customers of the amount determined to be
 19 collected by the surcharge if the interim emergency rates paid are higher than
 20 the final rates determined by the Commission⁵;
- 21 • filing with Docket Control documentary evidence that it is taking steps to
 22 resolve its noncompliance with ADEQ regulations; and
- 23 • consulting with Staff, within 14 days of the effective date of this Decision, for
 24 instruction in how to maintain its books and records in accordance with the
 25 NARUC Uniform System of Accounts.

26 29. Lastly, we shall require that the Company file a permanent rate case with a test year

27 ⁵ The requirement of the bond being posted in an emergency rate situation is discussed more fully in the *Rio Verde*
 28 decision, *supra*.

1 ending December 31, 2003 no later than March 1, 2004.

2 30. We also believe that Staff and the Legal Division, in the best interests of Applicant's
3 customers, should investigate further the litigation which involves the attempt to encumber the
4 Company's assets without prior Commission approval, in violation of A.R.S. § 40-285(A) and take
5 any and all steps they deem necessary to insure that the Company's customers are not adversely
6 affected by the pending litigation.

7 **CONCLUSIONS OF LAW**

8 1. Applicant is a public service corporation within the meaning of Article XV of the
9 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

10 2. The Commission has jurisdiction over the Company and of the subject matter of the
11 Application.

12 3. Notice of the Application was provided in the manner prescribed by law.

13 4. Applicant is facing an "emergency" within the definition set forth in Attorney General
14 Opinion No. 71-17, as discussed and affirmed in *Scates* and *Rio Verde* cases cited herein.

15 5. The standards for approval of a request for interim rate relief require the existence of
16 an emergency; the posting of a bond by the utility company; and subsequent filing of a permanent
17 rate application.

18 6. Approval of the Company's application for interim rate relief, as described herein, is
19 consistent with the Commission's authority under the Arizona Constitution, ratemaking statutes, and
20 applicable case law.

21 7. The request for interim emergency rate relief is just and reasonable and should be
22 collected by means of adding a \$4.11 surcharge per 1,000 gallons to each customer's monthly bill for
23 all water used until the established balance is collected or until further Order, but shall not be
24 effective until the first day of the month following Applicant complying with Findings of Fact Nos.
25 27 and 28 hereinabove.

26 8. Applicant should file a permanent rate case with a test year ending December 31,
27 2003, no later than March 1, 2004.

28 9. Staff and the Legal Division should investigate the Company's pending litigation

described hereinabove and take any and all steps necessary to protect the interests of Applicant's customers.

ORDER

IT IS THEREFORE ORDERED that the application of Park Water Company, Inc. for an emergency surcharge be, and is hereby, approved to the extent described herein.

IT IS FURTHER ORDERED that the application of Park Water Company, Inc. shall recover its emergency expenses as discussed hereinabove by means of a surcharge of \$4.11 per 1,000 gallons for all water used until the established balance as of September 30, 2003 is recovered or until further Order, but said authorization shall be conditioned upon Park Water Company, Inc. complying with the requirements of Findings of Fact Nos. 27 and 28.

IT IS FURTHER ORDERED that Park Water Company, Inc. shall file an application for permanent rate relief with a test year ending December 31, 2003, no later than March 1, 2004.

IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject to refund pending the review by Staff of the permanent rate application.

IT IS FURTHER ORDERED that Park Water Company, Inc. shall maintain its books and records in accordance with the NARUC Uniform System of Accounts.

IT IS FURTHER ORDERED that Park Water Company, Inc. shall file on or before the first day of the month it is enabled to collect a surcharge, a tariff authorizing it to collect the \$4.11 per 1,000 gallons of water used emergency surcharge as authorized herein.

IT IS FURTHER ORDERED that the surcharge authorized hereinabove shall be effective for all service provided on and after the first day of the month following that in which the requirements of Findings of Fact No. 28 have been met.

IT IS FURTHER ORDERED that Park Water Company, Inc. shall, in a form approved by Staff, notify its customers by mail of the emergency surcharge authorized herein and the prospective effective date of same at least 15 days before the expected date of its imposition.

IT IS FURTHER ORDERED that Park Water Company, Inc.'s application for authority to implement interim rates is approved, to the extent and in the manner described herein.

IT IS FURTHER ORDERED that Park Water Company, Inc. shall comply with all

1 requirements and recommendations discussed in this Order as a condition of approval of its request
2 for interim rate relief.

3 IT IS FURTHER ORDERED that Park Water Company, Inc. shall file all information
4 requested by Staff necessary to analyze the collection of funds for the emergency water surcharge.

5 IT IS FURTHER ORDERED that Park Water Company, Inc. shall post a bond in an amount
6 of not less than the water hauling expense as of September 30, 2003 prior to implementing the
7 emergency water surcharge authorized by this Decision.

8 IT IS FURTHER ORDERED that the emergency water surcharge shall end when the water
9 hauling expenses as of September 30, 2003 have been collected or a Commission Decision is issued
10 regarding the Company's permanent rate case application.

11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14
15 CHAIRMAN

COMMISSIONER

COMMISSIONER

16
17 COMMISSIONER

COMMISSIONER

18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Secretary of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this ____ day of _____, 2003.

23 BRIAN C. McNEIL
EXECUTIVE SECRETARY

24 DISSENT _____

25
26 DISSENT _____

27 MES:mj

1 SERVICE LIST FOR:

PARK WATER COMPANY, INC.

2 DOCKET NO.

W-02253A-03-0507

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